

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TIMOTHY S. DOSS,

Plaintiff,

v.

Case No. 15-cv-6-pp

ERIC SWEETMAN, *et al.*,

Defendants.

**ORDER DISCHARGING ORDER TO SHOW CAUSE (DKT. NO. 52),
ALLOWING THE DEFENDANTS' UNTIMELY RESPONSE TO THE
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, DENYING THE
DEFENDANTS' REQUEST TO FILE A REPLY BRIEF OUT OF TIME, AND
ALLOWING THE PLAINTIFF TO FILE A REPLY BRIEF WITHIN FOURTEEN
DAYS**

On December 28, 2015, plaintiff Timothy Doss, who is representing himself, filed a motion for summary judgment. Dkt. No. 21. On January 8, 2016, the defendants filed their own motion for summary judgment; their motion did not indicate that they intended their supporting brief to serve as their response to the plaintiff's motion. Dkt. No. 27. On February 11, 2016, the court ordered the defendants to show cause why the court should not consider the plaintiff's motion for summary judgment unopposed, and to explain why they had not timely responded to the motion. Dkt. No. 52.

On February 12, 2016, the defendants filed a document (entitled "Defendants' Response to Order (DKT 52)") with the court, explaining that they had believed that they had filed a motion seeking to extend the deadline by which they were required to respond to the plaintiff's motion. Dkt. No. 53. They

indicated that they now realized that they had inadvertently failed to file the motion Id. They asked that, despite this error, they be allowed to respond to the plaintiff's proposed findings of fact, nearly all of which they do not dispute. Id. They stated that their previously-filed brief in support of their motion for summary judgment should serve as their response to the plaintiff's motion. Id. The defendants conceded that they should have indicated that intention in their brief. Id.

The "spirit and inclination" of our legal rules "favor[s] decisions on the merits, and reject[s] an approach that pleading is a game of skill in which one misstep may be decisive." Schiavone v. Fortune, 477 U.S. 21, 27 (1986). The defendants indicate that they intended to oppose the plaintiff's motion for summary judgment, and were relying on a request for an extension of time that they inadvertently forgot to file.

Because the court prefers to decide cases on the merits, it will, as requested, consider the defendants' motion for summary judgment (Dkt. NO. 27) to serve as their response to the plaintiff's motion. The court also will consider the defendants' late responses to the plaintiff's proposed findings of fact, which the defendants filed on February 12, 2016. Dkt. No. 55. To be fair, the court will give the plaintiff fourteen days from the entry of this order to file a reply in support of his motion for summary judgment, if he desires to file one.

On January 21, 2016, the plaintiff filed a brief in opposition to the defendant's motion for summary judgment, Dkt. No. 50, as well as objections to their proposed findings of fact, Dkt. No. 51. Civil Local Rule 56(b)(3) gives a

moving party the opportunity to file a reply in support of its motion within fourteen days of service of the opposing party's response. The defendants did not file a reply within the allotted time.

The defendants now ask that the court permit them to file a reply in support of their motion for summary. The court denies this request. The defendants provide no justification for their failure to timely file a reply brief; their explanation about having inadvertently failed to ask for an extension of time does not explain this failure. Parties are not required to file reply briefs; the defendants' motion and the plaintiff's response provide the court with both the arguments of both sides, and the court will decide the defendants' motion based on those two pleadings.

The court **ORDERS** that its February 11, 2016 Order to Show Cause (Dkt. No. 52) has been **DISCHARGED** by the defendants' February 12, 2016 filings. The court **DENIES** the defendants' request to file a reply to the plaintiff's response to their motion for summary judgment. Dkt. No. 42. The court **ORDERS** that the plaintiff may, if he chooses, file a reply brief in support of his motion for summary judgment within **fourteen days** of the entry of this order.

Dated in Milwaukee, Wisconsin, this 17th day of February, 2016.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge